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PATENT  
ATTORNEY DOCKET NUMBER: 50125/008001

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I hereby certify under 37 C.F.R. § 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to the Assistant Commissioner of Patents, Washington, D.C. 20231.

Colleen Coyne  
Printed name of person mailing correspondence

Colleen Coyne  
Signature of person mailing correspondence

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Marion Elke Hofmann et al.	Art Unit:	1653
Serial No.:	09/445,362	Examiner:	Carlson, K.
Filed:	May 15, 2000	Customer No.:	21559
Title:	MYOCARDIUM-AND SKELETAL MUSCLE-SPECIFIC NUCLEIC ACID, ITS PREPARATION AND USE		

Assistant Commissioner for Patents  
Washington, D.C. 20231

### DECLARATION OF GUY BEARDSLEY

I, Guy Beardsley, declare as follows:

I am employed by Clark & Elbing LLP as a Legal Administrator. I supervise the receipt from and delivery of mail to the United States Postal Service. I also assist in the preparation of sequence listings and sequence diskettes for submission to the U.S. Patent Office. I routinely prepare sequence diskettes for PTO submission, and have no reason to believe that the diskette prepared in connection with the above-referenced case was damaged.

The Clark & Elbing LLP mailroom procedures that I and all other employees follow require that all mail to be taken to the Post Office be left in a specially designated box in the

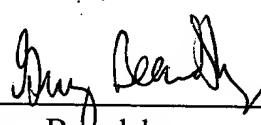
mailroom. It is also part of the mailroom procedures that I or another employee supervised by me asks each secretary each afternoon if he/she has any outgoing mail and to determine whether any of that mail is being sent by Registered, Express, or Certified mail. At the close of business each day, I or another employee designated by me checks the box for mail and delivers it as follows.

If there is any Registered, Express, or Certified mail in the box, all of the mail in the box including first class mail is delivered to the United States Postal Service's General Mail Facility on Dorchester Avenue. If there is no Registered, Express, or Certified mail in the box, then all of the mail is delivered to the United States Postal Service's mailbox outside our offices on Federal Street in Boston, Massachusetts. Neither of these procedures results in damage to the mail.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Respectfully submitted,

Date: 3/28/02

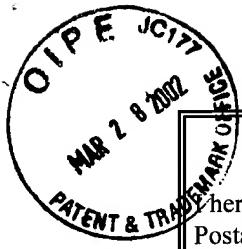
  
\_\_\_\_\_  
Guy Beardsley

Clark & Elbing LLP  
101 Federal Street  
Boston, MA 02110  
Telephone: 617-428-0200  
Facsimile: 617-428-7045

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21559  
PATENT TRADEMARK OFFICE



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Colleen Coyne  
Printed name of person mailing correspondence

Colleen Coyne  
Signature of person mailing correspondence

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Marion Elke Hofmann et al. Art Unit: 1653  
Serial No.: 09/445,362 Examiner: Carlson, K.  
Filed: May 15, 2000 Customer No.: 21559  
Title: MYOCARDIUM-AND SKELETAL MUSCLE-SPECIFIC NUCLEIC ACID, ITS PREPARATION AND USE

Assistant Commissioner for Patents  
Washington, D.C. 20231

DECLARATION OF COLLEEN COYNE

I, Colleen Coyne, declare as follows:

I am an employee of the law firm of Clark & Elbing LLP and have been a patent law secretary for three years.

On October 16, 2001, I signed the certificate of mailing stamped directly on the correspondence entitled Reply to Notice to Comply with Sequence Requirements, the Sequence Statement, the Preliminary Amendment, and the Petition for Extension of Time, which indicated that the correspondence and accompanying postcard and check were being deposited with the United States Postal Service on October 16, 2001. This reply included a sequence diskette. I made photocopies of the documents for the file, sealed the originals in an envelope preprinted with the address of the Assistant

Commissioner for Patents, and left the envelope in the designated box in our mailroom to be delivered to the United States Postal Service in accordance with the procedures described in the Declaration of Guy Beardsley.

Knowing the procedures for outgoing mail and my own experience with them, I had reasonable basis to expect that the correspondence would be deposited, undamaged, with the United States Postal Service on the date indicated.

On March 11, 2002, I received a Notice of Abandonment which had been mailed March 5, 2002, indicating that our diskette mailed on October 16, 2001 was defective. It was upon receipt of this notification that I first became aware that the patent application was abandoned.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Respectfully submitted,

Date: 3/22/02

Colleen Coyne  
Colleen Coyne

Clark & Elbing LLP  
101 Federal Street  
Boston, MA 02110  
Telephone: 617-428-0200  
Facsimile: 617-428-7045

  
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Colleen Coyne  
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Title: MYOCARDIUM-AND SKELETAL MUSCLE-SPECIFIC NUCLEIC ACID, ITS PREPARATION AND USE

Assistant Commissioner for Patents  
Washington, D.C. 20231

DECLARATION OF KAREN L. ELBING, PH.D.

I, Karen L. Elbing, Ph.D., declare as follows:

I am a partner in the law firm of Clark & Elbing LLP and an attorney of record in the above matter.

I first became aware of the abandonment of the above-referenced patent on March 11, 2002, upon receipt of the Notice of Abandonment. I submit that the accompanying petition to withdraw the Notice is being promptly submitted as required by 37 C.F.R. § 1.8(b)(1).

On October 16, 2001, I reviewed and signed the correspondence entitled Reply to Notice to Comply with Sequence Requirements, the Sequence Statement, the Preliminary

Amendment, and the Petition for Extension of Time and the certificate of mailing stamped directly on the correspondence, which indicated that the correspondence and accompanying postcard and check were being deposited with the United States Postal Service on October 16, 2001. This correspondence included a sequence diskette. I gave the signed documents to my secretary, who made photocopies for the file, sealed the originals in an envelope preprinted with the address of the Assistant Commissioner for Patents, and left the envelope in the designated box in our mailroom to be delivered to the United States Postal Service in accordance with the procedures described in the Declarations of Colleen Coyne and Guy Beardsley.

Knowing the procedures for outgoing mail and my secretary's experience with them, I had reasonable basis to expect that the correspondence would be deposited, undamaged, with the United States Postal Service on the date indicated.

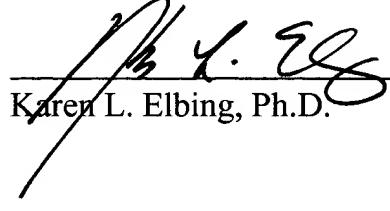
On March 11, 2002, I first received a Notice of Abandonment from the Patent Office, which had been mailed March 5, 2002, indicating that our diskette mailed on October 16, 2001 was defective. It was upon receipt of this notification that I first became aware that there was a problem with the sequence diskette and that the patent application was abandoned.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title

18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Respectfully submitted,

Date: 22 March 2002

  
Karen L. Elbing, Ph.D.

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